

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PREMIER CAPITAL, LLC, *Plaintiff/Appellee*,

v.

JOHN CORK, et al., *Defendants/Appellants*.

No. 1 CA-CV 17-0470
FILED 9-27-2018

Appeal from the Superior Court in Maricopa County
No. CV2008-093632
CV2009-013388
(Consolidated)
The Honorable Margaret Benny, *Judge Pro Tempore*

AFFIRMED

COUNSEL

Hymson Goldstein Pantiliat & Lohr PLLC, Scottsdale
By John L. Lohr, Jr., Lori N. Brown
Counsel for Plaintiff/Appellee

Sacks Tierney P.A., Scottsdale
By James W. Armstrong
Co-Counsel for Defendant/Appellants

Clark Hill PLC, Scottsdale
By Andrew B. Turk
Co-Counsel for Defendant/Appellants

PREMIER v. CORK et al.
Decision of the Court

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Peter B. Swann joined.

P E R K I N S, Judge:

¶1 John and Susan Cork appeal the superior court's orders requiring the Corks to appear for a judgment debtor exam, denying the Corks' motion to quash or suspend several writs of garnishment and execution in favor of Premier Capital LLC ("Premier"), and denying the Corks' motion for reconsideration. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In July 2005, CW Capital One Fund, LLC ("CW") took out a multimillion-dollar development loan secured by a Deed of Trust and personally guaranteed by the Corks. CW defaulted on the loan in July 2008 and the lender sold the property designated in the Deed of Trust to partially satisfy the loan, leaving a substantial deficiency. In January 2011, the superior court awarded the lender \$4.5 million, plus 10% post-judgment interest, enforceable against CW and the Corks. The final judgment was filed on January 10, 2011.

¶3 In December 2011, the lender assigned its entire interest in the January 2011 judgment to Premier. Later, in 2015, the superior court permitted Premier to intervene in the underlying case. Premier then filed a renewal affidavit, pursuant to Arizona Revised Statutes ("A.R.S.") section 12-1612, on January 13, 2016, to renew the January 2011 judgment. The superior court, on Premier's motion, substituted Premier as the Plaintiff in place of the lender. Premier subsequently applied for and was granted two writs of garnishment. Finally, in March 2017, Premier moved for a judgment debtor exam and the Corks responded, arguing Premier failed to timely renew the January 2011 judgment. The Corks additionally moved to quash the writs of garnishment and writ of execution Premier obtained, on the basis that the underlying judgment was not timely renewed.

¶4 Premier represented it had first filed a renewal affidavit on January 11, 2016, a Monday. The clerk's office rejected the January 11 filing due to a caption error, forcing Premier to refile on January 13. Finding that

PREMIER v. CORK et al.
Decision of the Court

the clerk's office should not have rejected the January 11, 2016 filing, the court ruled that Premier had timely filed its renewal affidavit on January 11, 2016, and that the amended January 13 filing was constructively filed on January 11. The Corks moved for reconsideration, the superior court denied their motion, and the Corks now appeal.

DISCUSSION

¶5 On appeal, the Corks argue the superior court erred in finding Premier's renewal affidavit was filed within the statutory period. They contend the superior court misapplied A.R.S. § 12-1612(B) and Arizona Rule of Civil Procedure ("Rule") 6(a) in concluding the last day to file the renewal affidavit was January 11, 2016. The Corks argue the last day to file should have been January 8, 2016, because this was the last court day before January 10, 2016, a Sunday, which was exactly five years after the entry of the original final judgment.

¶6 We review the superior court's interpretation of statutes and court rules *de novo*. *State ex rel. Indus. Comm'n v. Galloway*, 224 Ariz. 325, 327, ¶ 7 (App. 2010). When a statute is unambiguous, we apply it as written without resorting to other rules of statutory interpretation. *State ex rel. Dep't of Econ. Sec. v. Pandola*, 243 Ariz. 418, 419, ¶ 6 (2018). Generally, statutes related to the same subject or those with the same general purpose are read together. *Id.*

¶7 As an initial matter, it is undisputed that Premier initially filed its renewal affidavit on January 11 and that the filing was rejected by the clerk's office. Premier filed an amended renewal affidavit on January 13. It is well settled that when the clerk's office rejects a filing inappropriately or in response to mere formatting issues, such as the potentially improper caption at issue here, the rejection will not affect the timeliness of filing. *Whittaker Corp. v. Estate of King*, 25 Ariz. App. 356, 357 (1975); *see also Rowland v. Kellogg Brown and Root, Inc.*, 210 Ariz. 530, 532, ¶ 8, 534, ¶ 16 (App. 2005) (holding that a letter and filing fee rejected by the clerk's office constituted constructive filing of a complaint when the clerk's office rejected the filing as being improperly formatted or deficient). Thus, the superior court did not err in finding Premier had constructively filed its Affidavit of Renewal on January 11, 2016.

¶8 Even if constructively filed January 11, the Corks contend the renewal affidavit was nevertheless untimely under A.R.S. § 12-1612, Rule 6(a), and *Board of Supervisors of Maricopa Cty. v. Super. Ct.*, 103 Ariz. 502 (1968). Section 12-1612 governs the renewal of a judgment by affidavit and,

at the time, provided that a judgment creditor or representative “may within ninety days preceding the expiration of five years from the date of entry of such judgment, make and file an affidavit, known as a renewal affidavit” A.R.S. § 12-1612(B) (2016). Contrary to the Corks’ arguments, the statute is clear: a party seeking to renew a judgment must file a renewal affidavit within five (now ten) years from the date the initial judgment was entered. Under both the version of Rule 6(a) applicable in 2016 and the current version of Rule 6(a), when the applicable anniversary of the entry of judgment falls on a Saturday, Sunday, or holiday, the last day for filing is extended to the following calendar day that is not a Saturday, Sunday, or holiday. Ariz. R. Civ. P. 6(a) (2016); *see also* Ariz. R. Civ. P. 6(a)(3) (2018).

¶9 In contrast, the Corks argue that *Board of Supervisors* and similar cases require a renewal affidavit to be filed, in all circumstances, before the expiration of exactly five years from the entry of judgment. The Corks contend that when the last day to file a renewal affidavit falls on Saturday, Sunday, or holiday that the “next day” under Rule 6 should be calculated by counting backward to the next court day, in this case, Friday, January 8, 2016. To further this argument, the Corks point to the new language of Rule 6(a), which states that “[t]he ‘next day’ is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.” Ariz. R. Civ. P. 6(a)(4). The Corks argue the new language is merely a clarification of existing procedure, as detailed in *Board of Supervisors* and similar cases, and thus the current version of Rule 6(a) applies.

¶10 The Arizona Supreme Court has held that calculating the “next ensuing business day” requires counting backwards, rather than forwards, in certain circumstances. *Board of Supervisors*, 103 Ariz. at 504. In *Board of Supervisors*, the Arizona Supreme Court addressed A.R.S. § 16-1104(B), which required that absentee or disabled voter ballots be delivered to the county recorder “not less than thirty days prior to a primary election.” *Id.* Because the statute at issue required the ballots to be delivered “not less than thirty days” before a triggering event, the Court determined that officials would not be in compliance with the statute by allowing an additional day. *Id.* Instead, the Arizona Supreme Court determined the “next” day must be calculated by counting backward from the last day. *Id.* The statute in *Board of Supervisors* is distinguishable from § 12-1612(B), however, in that the *Board of Supervisors* statute measures the time to do an act as before some triggering event. This comports with the current version of Rule 6(a)(4), which requires that the “next day” be calculated by counting backward from the last day when a period is measured before an event. Moreover, *Board of Supervisors* is inapposite as Rule 6 “does not apply” to

PREMIER v. CORK et al.
Decision of the Court

the time elements of election statutes. *Smith v. Bd. of Directors, Hosp. Dist. No. 1, Pinal Cty.*, 148 Ariz. 598, 599 (App. 1985).

¶11 Here, the time for filing a renewal affidavit set forth in § 12-1612(B) is triggered by the entry of judgment and lapses five (now ten) years afterward. The legislature's inclusion of a ninety-day period within which to file the renewal affidavit does not change the triggering event, it merely serves to narrow the period of time that a potential creditor must search to determine whether a judgment remains valid. *Accord In re Smith*, 209 Ariz. 343, 346, ¶ 14 (2004). Even assuming *arguendo* that the current version of Rule 6 applies, as the Corks suggest, their argument fails. Accordingly, we affirm the superior court's application of Rule 6(a) and finding that Premier timely filed its renewal affidavit.

CONCLUSION

¶12 For the foregoing reasons, we affirm the superior court's orders requiring a debtor exam and denying the Corks' motions to quash. As the prevailing party, Premier may seek its costs on compliance with Arizona Rule of Civil Appellate Procedure 21. In our discretion, we decline to award Premier its attorneys' fees.



AMY M. WOOD • Clerk of the Court
FILED: AA